

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 02-3467

United States of America,

Plaintiff-Appellee,

v.

Robert Francis,

Defendant-Appellant.

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Appeals from the United States
District Court for the Eastern District
of Missouri.

No. 02-3498

[UNPUBLISHED]

United States of America,

Plaintiff-Appellee,

v.

Germaine Davis, also known as Gary
Henderson,

Defendant-Appellant.

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No. 02-3964

United States of America,

Plaintiff-Appellee

v.

Anthony Francis,

Defendant-Appellant.

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No. 02-3965

United States of America,

Plaintiff-Appellee,

v.

Leo Muhammad,

Defendant-Appellant.

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Submitted: January 24, 2005
Filed: July 21, 2005

Before MELLOY, BEAM, and SMITH, Circuit Judges.

PER CURIAM

Appellants Robert Francis, Anthony Francis, and Germaine Davis each filed petitions for writ of certiorari with the United States Supreme Court. The United States Supreme Court granted a writ of certiorari as to each of those defendants and vacated the decision as to each of them. Appellant Leo Muhammad filed a petition for rehearing by the panel. That petition remains pending.

We grant Leo Muhammad's petition for rehearing by the panel. As to all four cases, this court has conducted a review of the record in this case and the opinion filed May 12, 2004, is reinstated in its entirety, with the exception that the cases are remanded to the district court for resentencing under the advisory regime outlined in United States v. Booker, 125 S.Ct. 738 (2005).

In remanding these cases, the court notes that as to each defendant the district court enhanced the sentence based upon judge determined guideline adjustments. Accordingly, there is a Sixth Amendment error as discussed in Booker. The defendants preserved the Sixth Amendment issue by specifically referencing the decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). See United States v. Pirani, 406 F.3d 543, 549 (8th Cir. 2005). The four defendants were tried together and the defendants adopted each others objections to the presentence reports, which objections included a reference to Apprendi error. Since there is preserved Sixth Amendment error, the court will remand for resentencing under the advisory sentencing regime as outlined in Booker.

In conclusion, the court reinstates the decision filed May 12, 2004, in this matter, except as may be inconsistent with the remand for resentencing under the advisory guideline system as outlined in United States v. Booker.
